

CHAPTER 11 WAGE PAYMENT LAW

34:11-4.1. Definitions

As used in this act:

- a. "Employer" means any individual, partnership, association, joint stock company, trust, corporation, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same, employing any person in this State. For the purposes of this act the officers of a corporation and any agents having the management of such corporation shall be deemed to be the employers of the employees of the corporation.
- b. "Employee" means any person suffered or permitted to work by an employer, except that independent contractors and subcontractors shall not be considered employees.
- c. "Wages" means the direct monetary compensation for labor or services rendered by an employee, where the amount is determined on a time, task, piece, or commission basis excluding any form of supplementary incentives and bonuses which are calculated independently of regular wages and paid in addition thereto.
- d. "Commissioner" means the Commissioner of Labor.

34:11-4.2. Time and mode of payment; paydays

Except as otherwise provided by law, every employer shall pay the full amount of wages due to his employees at least twice during each calendar month, on regular pay days designated in advance by the employer, in lawful money of the United States or with checks on banks where suitable arrangements are made for the cashing of such checks by employees without difficulty and for the full amount for which they are drawn. An employer may establish regular paydays less frequently than semimonthly for bona fide executive, supervisory and other special classifications of employees provided that the employee shall be paid in full at least once each calendar month on a regularly established schedule.

If a regular payday falls on a nonwork day, that is, a day on which the workplace of an employee is not open for business, payment shall be made on the immediately preceding work day, except where it is otherwise provided for in a collective bargaining agreement.

The end of the pay period for which payment is made on a regular payday shall be not more than 10 working days before such regular payday, provided that if the regular payday falls on a nonwork day payment shall be made on the preceding work day.

34:11-4.2a. Payment by deposit in financial institution; consent by employee; cancellation; notice

In lieu of paying wages directly to employees as provided by P.L.1965, c. 173, s. 2 (C. 34:11-4.2), an employer may, with the consent of some or all his employees, arrange with a financial institution or financial institutions to pay the wages of each employee so consenting by causing the amount of such employee's wages to be deposited in an account maintained in any such financial institution in the name of such employee, subject to withdrawal and other disposition by such employee to the same extent and in the same manner as if such deposit were made directly by such employee. Any such employee may, on timely notice to the employer, elect not to have his wages deposited as provided herein, and to be paid such wages directly in the manner otherwise provided by law. Financial institution as used herein means any State-chartered or Federally-chartered institution authorized to accept deposits in New Jersey.

34:11-4.3. Termination or suspension of employment

Whenever an employer discharges an employee, or when the work of an employee is suspended as a result of a labor dispute, or when an employee for any reason whatsoever is laid off, or whenever an employee quits, resigns, or leaves employment for any reason, the employer shall pay the employee all wages due not later than the regular payday for the pay period during which the employee's termination, suspension or cessation of employment (whether temporary or permanent) took place, as established in accordance with section 2 of this act; or, in the case of employees compensated in part or in full by an incentive system, a reasonable approximation of all wages due, until the exact amounts due can be computed; provided, however, that when any employee is suspended as a result of a labor dispute and such labor dispute involves those employees who make up payrolls, the employer may have an additional 10 days in which to pay such wages. Such payment may be made either through the regular pay channels or by mail if requested by the employee.

34:11-4.4. Withholding or diverting wages

No employer may withhold or divert any portion of an employee's wages unless:

- a. The employer is required or empowered to do so by New Jersey or United States law; or
- b. The amounts withheld or diverted are for:
 - 1) Contributions authorized either in writing by employees, or under a collective bargaining agreement, to employee welfare, insurance, hospitalization, medical or surgical or both, pension, retirement, and profit-sharing plans, and to plans establishing individual retirement annuities on a group or individual basis, as defined by section 408 (b) of the federal Internal Revenue Code of 1986 (26 U.S.C. § 408(b)), or individual retirement accounts at any State or federally chartered bank, savings bank, or savings and loan association, as defined by section 408 (a) of the federal Internal Revenue Code of 1986 (26 U.S.C. § 408(a)), for the employee, his spouse or both.
 - 2) Contributions authorized either in writing by employees, or under a collective bargaining agreement, for payment into company-operated thrift plans; or security option or security purchase plans to buy securities of the employing corporation, an affiliated corporation, or other corporations at market price or less, provided such securities are listed on a stock exchange or are marketable over the counter.
 - 3) Payments authorized by employees for payment into employee personal savings accounts, such as payments to a credit union, savings fund society, savings and loan or building and loan association; and payments to banks for Christmas, vacation, or other savings funds; provided all such deductions are approved by the employer.
 - 4) Payments for company products purchased in accordance with a periodic payment schedule contained in the original purchase agreement; payments for employer loans to employees, in accordance with a periodic payment schedule contained in the original loan agreement; payments for safety equipment; payments for the purchase of United States Government bonds; and payments to correct payroll errors; provided all such deductions are approved by the employer.
 - 5) Contributions authorized by employees for organized and generally recognized charities; provided the deductions for such contributions are approved by the employer.
 - 6) Payments authorized by employees or their collective bargaining agents for the rental of work clothing or uniforms or for the laundering or dry cleaning of work clothing or uniforms; provided the deductions for such payments are approved by the employer.
 - 7) Labor organization dues and initiation fees, and such other labor organization charges permitted by law.
 - 8) Contributions authorized in writing by employees, pursuant to a collective bargaining agreement, to a political committee, continuing political committee, or both, as defined in section 3 of P.L.1973, c. 83 (C. 19:44A-3), established by the employees' labor union for the purpose of making contributions to aid or promote the nomination, election or defeat of any candidate for a public office of the State or of a county, municipality or school district or the passage or defeat of any public question, subject to the conditions specified in section 2 of P.L.1991, c. 190 (C. 34:11-4.4a).
 - 9) Contributions authorized in writing by employees to any political committee or continuing political committee, other than a committee provided for in paragraph (8) of this subsection, for the purpose of making contributions to aid or promote the nomination, election or defeat of any candidate for a public office of the State or of a county, municipality or school district or the passage or defeat of any public question, subject to the conditions specified in section 2 of P.L.1991, c. 190 (C. 34:11-4.4a); in making a payroll deduction pursuant to this paragraph the administrative expenses incurred by the employer shall be borne by such committee, at the option of the employer.
 - 10) Payments authorized by employees for employer-sponsored programs for the purchase of insurance or annuities on a group or individual basis, if otherwise permitted by law.
 - 11) Such other contributions, deductions and payments as the Commissioner of Labor may authorize by regulation as proper and in conformity with the intent and purpose of this act, if such deductions are approved by the employer.

34:11-4.4a. Conditions for withholding or diversion of employee contributions to political committees or continuing political committees

In the case of contributions withheld or diverted pursuant to paragraph (8) or (9) of subsection b. of section 4 of P.L. 1965, c. 173 (C. 34:11-4.4), the contribution shall be withheld or diverted only after compliance with the following conditions:

a. The payroll deduction authorization must be signed by the employee and contain the following explanatory statement:

I recognize that my/any contribution through payroll deduction is completely voluntary and in compliance with State law. It shall be unlawful for any person soliciting an employee for contribution to such a fund to fail to inform such employee of his or her right to refuse to contribute without reprisal.

Any questions relative to compliance with election law may be directed to the Election Law Enforcement Commission, 28 West State Street, Trenton, New Jersey 08625, (609) 292-8700.

- b. Any political action committee or continuing political committee which elects to solicit employees under the provisions of section 4 of P.L. 1965, c. 173 (C. 34:11-4.4) shall file with the Election Law Enforcement Commission a statement of registration which identifies the title of the committee and the general category of entity or entities, including, but not limited to, business organizations, labor organizations, professional or trade associations, candidates for or holders of public offices, political parties, ideological groups, or civic associations, the interests of which are shared by the leadership, members or financial supporters of the committee. The statement of registration shall include: (1) the names and mailing addresses of the persons having control over the management of the affairs of the committee; (2) in the case of any person identified under paragraph (1) of this subsection b. who is an individual, the occupation of that individual, and the name and mailing address of the individual's employer, or, in the case of any such entity which is a corporation, partnership, unincorporated association or other organization, the name and mailing address of the organization; and (3) an explanatory statement as to the process utilized for the selection of recipients of funds raised by committee.
- c. The political action committee or continuing political committee shall provide space on the payroll deduction authorization document to allow the employee to direct his or her contributions to specific candidates.
- d. No employee may elect to contribute more than \$5 per week by means of payroll deduction. No employee may have wages withheld or diverted for more than one political action committee or continuing political committee.
- e. No solicitation shall be made for employee contributions on the job or at the workplace.
- f. Any political action committee or continuing political committee which elects to solicit employees under the provisions of this act shall annually provide each employee participant with a financial statement indicating disbursement of funds including administrative charges.

34:11-4.5. Death of employee

- a. In the event of the death of an employee all wages due the deceased employee may, upon proper demand on the employer, be paid, in the absence of actual notice of the pendency of probate proceedings, without requiring letters testamentary or of administration in the following order of preference to decedent's:
1. surviving spouse,
 2. children 18 years of age and over in equal shares, or to the guardian of children under 18 years of age,
 3. father and mother or survivor,
 4. sisters and brothers, or to the person who pays the funeral expenses.
- b. Payments under subsection a. of this section made after presentation of proof of relationship shall be a release and discharge of the employer to the amount of such payment.

34:11-4.6. Dissemination of information; records

Every employer shall:

- a. Notify his employees at the time of hiring, of the rate of pay, and of the regular payday designated by the employer in accordance with section 2 of this act.
- b. Notify his employees of any changes in the pay rates or paydays prior to the time of such changes.
- c. Furnish each employee with a statement of deductions made from his wages in accordance with section 4 of this act for each pay period such deductions are made.

- d. Keep posted in a place accessible to his employees an abstract of this act furnished by the commissioner, and
- e. Make such records as to the persons employed by him, including wage and hour records and preserve such records for such periods of time, as the commissioner shall prescribe by regulation as necessary or appropriate for the enforcement of the provisions of this act, provided that records of the number of hours worked shall not be required as to any person employed in a bona fide executive, administrative or professional capacity or in the capacity of outside salesman 18 years of age or older where the wages of such person or persons are not determined by the number of hours worked.

34:11-4.7. Agreements by employer with employee

It shall be unlawful for any employer to enter into or make any agreement with any employee for the payment of wages of any such employee otherwise than as provided in this act, except to pay wages at shorter intervals than as herein provided, or to pay wages in advance. Every agreement made in violation of this section shall be deemed to be null and void, and the penalties in this act provided may be enforced notwithstanding such agreement; and each and every employee with whom any agreement in violation of this section shall be made by any such employer, or the agent or agents thereof, shall have a right of civil action against any such employer for the full amount of his wages in any court of competent jurisdiction in this State.

34:11-4.8. Dispute over amount of wages

- b. In case of a dispute over the amount of wages, the employer shall pay, without condition and within the time set by this act, all wages, or parts thereof, conceded by him to be due, leaving to the employee all remedies to which he might otherwise be entitled, including those provided under this act, as to any balance claimed.
- c. The acceptance by an employee of a payment under this section shall not constitute a release as to the balance of his claim and any release required by an employer as a condition to payment shall be in violation of this act and shall be null and void.

34:11-4.9. Administration of act; hearings; investigations; actions for penalties

- a. The commissioner shall enforce and administer the provisions of this act and the commissioner or his authorized representatives are empowered to investigate charges of violations of this act.
- b. The commissioner or his authorized representatives are empowered to enter and inspect such places, question such employees and investigate such facts, conditions or matters as they may deem appropriate to determine whether any person has violated any provision of this act or any rule or regulation issued hereunder or which may aid in the enforcement of the provisions of this act.
- c. The commissioner or his authorized representatives shall have power to administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses, and the production of papers, books, accounts, records, payrolls, documents, and testimony, and to take depositions and affidavits in any proceeding before the commissioner.
- d. If a person fails to comply with any subpoena lawfully issued, or on the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated, it shall be the duty of the Superior Court, on application by the commissioner, to compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.
- e. The commissioner is authorized to supervise the payment of amounts due to employees pursuant to Article 1 of chapter 11 of Title 34 of the Revised Statutes, and the employer may be required to make these payments to the commissioner to be held in a special account in trust for the employees, and paid on order of the commissioner directly to the employee or employees affected. The employer shall also pay the commissioner an administrative fee equal to not less than 10% or more than 25% of any payment made to the commissioner pursuant to this section. The amount of the administrative fee shall be specified in a schedule of fees to be promulgated by rule or regulation of the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.). The fee shall be applied to enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.
- f. The commissioner or his designee is authorized to enter into a reciprocal agreement with the labor department or other corresponding agency of any other state or with a person or body authorized to act on behalf of that agency, for

the collection of claims and judgments for wages, administrative fees or penalties based on claims arising in each others' states.

To the extent provided for by the laws of the other state or by any reciprocal agreement entered into with an agency of the other state as provided in this subsection, the commissioner or his designee may: (1) maintain actions in the courts of the other state for the collection of claims and judgments for wages, administrative fees and penalties; and (2) assign the claims and judgments to the agency in the other state for collection. Upon the written consent of the agency in the other state, or the person or body authorized to act on behalf of that agency, the commissioner or his designee may maintain actions in the courts of this State upon assigned claims and judgments for wages, administrative fees and penalties arising in the other state in the same manner and to the same extent that such actions by the commissioner or his designees are authorized when arising in this State, but only if the other state extends, by law or agreement, a like comity to cases arising in this State.

34:11-4.10. Violations

Any employer who knowingly and willfully violates any provision of P.L.1965, c. 173 (34:11-4.1 et seq.) shall be guilty of a disorderly persons offense and, upon conviction for a violation, shall be punished by a fine of not less than \$100 nor more than \$1,000. Each day during which any violation of this act continues shall constitute a separate and distinct offense. As an alternative to or in addition to any other sanctions provided by law for violations of P.L.1965, c. 173 (C. 34:11-4.1 et seq.), when the Commissioner of Labor finds that an employer has violated that act, the commissioner is authorized to assess and collect administrative penalties, up to a maximum of \$250 for a first violation and up to a maximum of \$500 for each subsequent violation, specified in a schedule of penalties to be promulgated as a rule or regulation by the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.). When determining the amount of the penalty imposed because of a violation, the commissioner shall consider factors which include the history of previous violations by the employer, the seriousness of the violation, the good faith of the employer and the size of the employer's business. No administrative penalty shall be levied pursuant to this section unless the Commissioner of Labor provides the alleged violator with notification of the violation and of the amount of the penalty by certified mail and an opportunity to request a hearing before the commissioner or his designee within 15 days following the receipt of the notice. If a hearing is requested, the commissioner shall issue a final order upon such hearing and a finding that a violation has occurred. If no hearing is requested, the notice shall become a final order upon expiration of the 15-day period. Payment of the penalty is due when a final order is issued or when the notice becomes a final order. Any penalty imposed pursuant to this section may be recovered with costs in a summary proceeding commenced by the commissioner pursuant to "the penalty enforcement law" (N.J.S. 2A:58-1 et seq.). Any sum collected as a fine or penalty pursuant to this section shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.

34:11-4.11. Rules and regulations

The commissioner is authorized to propose and issue, from time to time, rules and regulations to implement the provisions of this act. Such proposed rules and regulations shall be published and made available to the public with notice that the same shall become effective on a specified date, not earlier than 60 days from publication thereof, and that a public hearing on the proposed rule or regulation shall be held at a place, date and time specified, on a date not earlier than 15 days from the date published copies are made available to the public. At any public hearing held under this section, all interested parties shall have the right to present testimony either orally or in writing, and the commissioner shall consider all testimony offered before promulgating a final rule or regulation.

34:11-4.12. Construction of act

Nothing in this act shall be deemed to require any employer to amend, change, revise or suspend any pay practice, procedure, policy or system that is authorized or permitted under any provision of this act.

34:11-4.13. Repeal

The following sections of the Revised Statutes are repealed: 34:11-4, 34:11-6, 34:11-7, 34:11-23, 34:11-24 and 34:11-27 to 34:11-30, inclusive.

34:11-4.14. Purchase of salary, wages, commissions or other pay for services

- a. It shall be unlawful for any person to purchase or have assigned to him, other than by order of court, any salary, wages, commissions, pay or other compensation for services, or any part thereof, due or to become due to any employee and any purchase or assignment, whenever executed, shall be void. It shall also be unlawful for any person

to withhold or to pay to any other person on the basis of any assignment or purchase prohibited by this section any salary, wages, commissions, pay or other compensation due to any employee.

- b. Any person who violates this section, or attempts to do so, shall be liable to the employee for the amount of the salary, wages, commissions, or other compensation for services withheld from the employee.
- c. Nothing contained in this section shall be construed to make unlawful the withholding or diverting of wages by any employer in accordance with section 4 of P.L.1965, c. 173 (C.34:11-4.4).

CHAPTER 11 MEDICAL EXAMINATION REQUESTED BY EMPLOYER

34:11-24.1. Medical examinations requested by employers; imposition of cost on employees prohibited

No employer or prospective employer shall deduct from the wages of any employee or from the wages to be paid to a prospective employee any sum, or in any manner require payment of any sum from such employee or prospective employee, to defray the cost of any medical examination of such employee or prospective employee when such examination is made at the request or direction of the employer, by a physician designated by said employer, as a condition of entering or continuing employment, and in the event that the employee or prospective employee pays for any such medical examination, the employer or prospective employer shall reimburse the employee or prospective employee for the amount of any such payment.

34:11-24.2. Penalty for violation

Every person who shall violate any of the provisions of this act shall be liable to a penalty of one hundred dollars (\$100.00), to be recovered by and in the name of the Department of Labor and Industry for the use of the State.

CHAPTER 11 DISCRIMINATION IN WAGES

34:11-56.1. Definitions

As used in this act:

- a. "Employee" includes any person, either male or female, employed by an employer, but shall not include persons performing volunteer service for nonprofit organizations or corporations nor persons employed on a farm, or in domestic service in a private home, or in a hotel.
- b. "Employer" includes any person acting directly or indirectly in the interest, or as agent, of an employer in relation to an employee and further includes one or more individuals, partnerships, corporations, associations, legal representatives, trustees, trustees in bankruptcy, or receivers, but such term shall not include nonprofit hospital associations or corporations.
- c. "Employ" includes to suffer or permit to work.
- d. "Occupation" includes any industry, trade, business or branch thereof, or any employment or class of employment.
- e. "Commissioner" means the Commissioner of Labor and Industry of the State of New Jersey.

34:11-56.2. Discrimination in pay based on sex prohibited

No employer shall discriminate in any way in the rate or method of payment of wages to any employee because of his or her sex. A differential in pay between employees based on a reasonable factor or factors other than sex shall not constitute discrimination within the meaning of this section.

34:11-56.3. Enforcement of act

The Commissioner of Labor and Industry shall have the power and it shall be his duty to carry out and enforce the provisions of this act.

34:11-56.4. Inspection of records; obtaining of information

The commissioner, or his authorized representative, shall have the power to enter the place of employment of any employer to inspect and copy payrolls and other employment records, to compare character of work and skills on which

persons employed by the employer are engaged, to question such persons under subpoena, if necessary, and to obtain such other information as is reasonably necessary to the administration and enforcement of this act.

34:11-56.5. Regulations, power to make

The commissioner shall have the power to issue such regulations, not inconsistent with the purpose and provisions of this act, as he deems necessary or appropriate for the efficient administration thereof.

34:11-56.6. Violations of act

Any employer who willfully violates any provision of this act, or who discharges or in any other manner discriminates against any employee because such employee has made any complaint to his or her employer, the commissioner, or any other person, or instituted, or caused to be instituted any proceeding under or related to this act, or has testified or is about to testify in any such proceedings, shall be guilty of a misdemeanor and, upon conviction thereof, be punished by a fine of not less than fifty dollars (\$50.00), nor more than two hundred dollars (\$200.00), or by imprisonment for not less than ten days nor more than ninety days, or by both fine and imprisonment.

34:11-56.7. Failure to furnish records; interference with commissioner in performance of duties

Any employer who willfully fails to furnish required records and information to the commissioner upon request, or who falsifies such records or who hinders, delays, or otherwise interferes with the commissioner, or his authorized representative, in the performance of his duties in the enforcement of this act, or refuses such official entry into any place of employment which he is authorized by this act to inspect, shall be guilty of a misdemeanor and, upon conviction be punished by a fine of not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200.00).

34:11-56.8. Actions by or on behalf of employees; damages

If any employee, because of his or her employer's violation of the provisions of section two of this act, is discriminated against in the payment of wages, such employee may recover in a civil action the full amount of the salary or wages due from the employer plus an additional equal amount as liquidated damages, together with costs and such reasonable attorney's fees as may be allowed by the court, and any agreement between such employee and employer to work for less than such salary or wages shall be no defense to the action. At the request of any employee paid less than the wage to which she may be entitled under this act, the commissioner may take an assignment of such wage claim in trust for the assigning employee and may bring any legal action necessary to collect such claim, including the liquidated damages provided by this section without cost to the employee. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action. The commissioner shall not be required to pay the filing fee, or other costs, in connection with such action. The commissioner shall have power to join various claimants against the employer in one cause of action.

34:11-56.9. Notice of alleged violation; hearing

If complaint shall be made to the commissioner, or if he shall have reason to believe that any provision of this act has been violated, he may cause notice of such alleged violation to be given to the alleged violator, giving the party so notified the opportunity to answer such complaint. The alleged violator shall be given an opportunity, at his request, to be heard with regard to such alleged violation, under such rules and regulations as may be prescribed by the commissioner provided that the complaining party and all interested persons shall be notified of such hearing and given an opportunity to be present. If, as the result of such hearing, it shall appear that the purposes of this act may be served and any violation corrected without the institution of any prosecution, the commissioner shall not be obligated to institute any prosecution for any such violation.

34:11-56.10. Partial invalidity

The provisions of this act shall be construed as severable and if any part be held unconstitutional, or for any other reason invalid, the remaining parts shall not be affected thereby.

34:11-56.11. Effective date

This act shall take effect July first, one thousand nine hundred and fifty-two.

CHAPTER 11 WAGE COLLECTION

34:11-57. Definitions

As used in this article: "Commissioner" means the Commissioner of Labor and Industry or any person or persons in the department designated in writing by him for the purposes of this article.

"Employee" means any natural person who works for another for hire.

"Employer" means any person, partnership, firm or corporation employing another for hire.

"Wages" means any moneys due an employee from the employer whether payable by the hour, day, week, semimonthly, monthly or yearly and shall include commissions, bonus, piecework compensation and any other benefits arising out of an employment contract.

34:11-58. Investigation of wage claims; testimony; award and judgment

The commissioner is authorized and empowered to investigate any claim for wages due an employee and in such investigation may summon the defendant, subpoena witnesses, administer oaths, take testimony and shall upon such proceeding make a decision or award when the sum in controversy, exclusive of costs, does not exceed \$10,000.00. Such decision or award shall be a judgment when a certified copy thereof is filed with the Superior Court.

Such judgment shall be entered in the same manner and have the same effect and be subject to the same proceedings as are judgments rendered in suits duly heard and determined by courts of competent jurisdiction.

The commissioner is authorized to supervise the payment of amounts due to employees under an award made pursuant to this section, and the employer may be required to make these payments to the commissioner to be held in a special account in trust for the employees, and paid on order of the commissioner directly to the employee or employees affected. The employer shall also pay the commissioner an administrative fee equal to not less than 10% or more than 25% of any payment made to the commissioner pursuant to this section. The amount of the administrative fee shall be specified in a schedule of fees to be promulgated by rule or regulation of the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.). The fee shall be applied to enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.

34:11-59. Claim docketed; summons; service

An employee may file a written claim for wages against an employer in the wage collection division of the department which shall be entered in a book to be called the wage collection docket. Upon the filing of claim, the department shall issue a summons returnable between the hours of nine o'clock in the forenoon and three o'clock in the afternoon, both inclusive, which shall also specify a certain time and place for the appearance of the defendant, not less than five nor more than fifteen days from the date of such process, which summons shall be served at least five days before the time of appearance mentioned therein, by reading the same to the defendant and delivering to him a copy thereof if he shall be found and if not found by leaving a copy thereof in his house or with some other person of his family over the age of fourteen years. Such persons being served with summons and complaint shall be informed of the contents thereof and the person serving the summons shall indorse thereon a return of the time and manner he executed the same, and sign his name thereon. At the time and place specified in the summons, the commissioner shall inquire in a summary way into the merits of the employee's claim and defenses of the defendant, if any.

34:11-60. Process to run throughout state; by whom served

Process of the wage collection division shall run throughout the state. Service of process shall be made either by a constable or a process server of the department.

34:11-61. Commissioner may administer oaths, take testimony, etc.; process in name of commissioner

The commissioner shall have power to administer oaths, hear testimony and take or cause to be taken depositions of witnesses residing within or without the state. The summonses, subpoenas, and orders to take testimony and for production of documents, emanating from the wage collection division shall issue in the name of the commissioner and under the seal of the department.

34:11-62. Set-off; dismissal where balance due defendant exceeds \$1,000.00

If the defendant files a set-off against the plaintiff for more than \$1,000.00 and at the trial it shall be proved that the balance exceeding \$1,000.00 is due the defendant then suit shall be dismissed unless the defendant consents to accept

judgment for \$1,000.00 and costs in full settlement of this claim, but in no event shall a counterclaim for unliquidated damages be set up against plaintiff for wages in the wage collection section.

34:11-63. Appeals; bonds; procedure

From any judgment which may be obtained in the wage collection division, except such as shall be given by confession, either party may, upon filing a notice of appeal with the wage collection division within twenty days after judgment shall be given, appeal to the Superior Court. The appellant shall give a bond in every case, except where the judgment appealed from is partially in his favor and no set-off against his demand has been allowed by the division, or where the court otherwise orders. The bond shall be secured by one sufficient surety, either a freeholder in the county or a surety company authorized to do business in New Jersey, and shall be in double the amount of such judgment or of any off-set allowed by the division, conditioned that the appellant shall prosecute his appeal in the Superior Court, stand to and abide the judgment of the court, and pay such costs as shall be taxed against him if the judgment be affirmed. The wage collection division shall then prepare a transcript of the record to be filed in the Superior Court.

34:11-64. Repealed by L.1991, c. 91, § 533, eff. April 9, 1991

34:11-65. Evidence on appeal

Upon the trial of any appeal either party may produce any witness not produced or sworn in the court below, or any documentary evidence not offered or admitted in the court below, if otherwise legal and competent, without notice to the opposite party.

34:11-66. Jury trial; other remedies

Nothing in this article shall prevent the claimant from instituting an action for his claim in any court of competent jurisdiction or be construed to deny or limit the right of the plaintiff or defendant to a trial by jury. Where either party demands a trial by jury, he shall pay, at least two days before the return date or the adjourned date of hearing of his cause, the statutory jury fee to the wage collection division and thereupon the wage collection division of the department shall file the entire record, in the cause, in the Superior Court, for trial by jury of the issues presented by the claimant and defendant. The jury fee so received shall be paid to the court wherein the cause is to be tried by the judge and jury. The judgment shall be docketed in the Superior Court as are other judgments of the wage collection division.

34:11-67. Fees and costs

No filing fee shall be charged by the wage collection division, for accepting a wage claim, and no advance fees shall be charged by constables making service of process on wage claims the wage collection division, nor shall any fee be charged by any county clerk for filing of any award or determination of the wage collection division or sheriff for execution and levy but the collection of any wage claim either by execution or otherwise shall carry taxed costs of service, filing, recording fees, executions, and similar items, in accordance with the schedule of costs as prescribed for the Superior Court, Law Division, Special Civil Part. All moneys received by way of taxed costs shall be retained by the wage collection division and at the end of each calendar year shall be paid into the State treasury for the use of the State.

CHAPTER 11A FRINGE BENEFITS; TITLE 17 INSURANCE, CHAPTER 30

34:11A-16. Findings, declarations relative to notification with regard to health benefits plans.

1. The Legislature finds and declares that:
 - a. Many employers in this State offer health benefits coverage to their employees under a health benefits plan as an incentive to attract and retain qualified employees.
 - b. Health benefits coverage is very important to employees and their families and the availability of such coverage through an employer can be the determining factor as to whether an individual accepts employment with a particular employer.
 - c. According to data tabulated by the Urban Institute based on the 1999 National Survey of America's Families, approximately 5.5 million New Jersey residents, which includes employees and their dependents, were covered by an employer-sponsored health benefits plan in 1999.

- d. In certain instances, an employer may make a business decision not to continue an employee health benefits plan, due to rising health care costs and other economic factors, and may not always notify the employees beforehand of its decision.
- e. It is a disservice to the working people of this State not to require that an employer provide prior notification to its employees when the employee health benefits plan will be terminated, for whatever reason.

34:11A-17. Notice by employer of termination, change of benefits.

- 2. An employer that provides a health benefits plan as defined in section 2 of P.L.1997, c.192 (C.26:2S-2) to its employees in this State shall provide, in writing, 30 days' prior notice to those employees before the health benefits plan is terminated; except that, in the case of an employer that changes a health benefits plan, the employer shall immediately notify its employees in writing of the change upon receipt by the employer of notification from the health insurer that its employees will be covered by the new plan.

34:11A-18. Violations, penalties.

- 3. a. The Commissioner of Labor shall enforce and administer the provisions of sections 1 through 4 of this act, and the commissioner or his authorized representatives are empowered to investigate violations of those provisions.
- b. When the commissioner finds that an employer has violated this act by failing to provide the notice required pursuant to section 2 of this act, the commissioner is authorized to assess and collect administrative penalties specified in a schedule of penalties to be promulgated by the commissioner by regulation. The penalty amount shall be based on the number of employees covered under the health benefits plan and shall not exceed \$200 an employee.
- c. No administrative penalty shall be levied pursuant to this section unless the commissioner provides the alleged violator with notification of the violation and of the amount of the penalty by certified mail and an opportunity to request a hearing before the commissioner or his designee within 15 days following the receipt of the notice. If a hearing is requested, the commissioner shall issue a final order upon that hearing and a finding that a violation has occurred. If no hearing is requested, the notice shall become a final order upon expiration of the 15-day period. Payment of the penalty is due when a final order is issued or when the notice becomes a final order.
- d. Any penalty imposed pursuant to this section may be recovered with costs in a summary proceeding commenced by the commissioner pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

34:11A-19. Regulations.

- 4. The Commissioner of Labor shall promulgate regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to effectuate the provisions of sections 1 through 4 of this act.

17B:30-40. Definitions, construction, regulations on notice of premium increase to employers.

- a. As used in this section:

"Carrier" means any entity subject to the insurance laws and regulations of this State, or subject to the jurisdiction of the Commissioner of Banking and Insurance, that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including an insurance company authorized to issue health insurance, a health maintenance organization, a hospital service corporation, medical service corporation and health service corporation, or any other entity providing a plan of health insurance, health benefits or health services. The term "carrier" shall not include a joint insurance fund established pursuant to State law.

"Health benefits plan" means a health benefits plan as defined in section 2 of P.L.1997, c.192 (C.26:2S-2).

- b. For the renewal of a health benefits plan for which the premium rate will increase, a carrier shall provide, in writing, 60 days' prior notice of the amount of the increase, to the employer that purchased that plan.
- c. The provisions of this section shall not be construed to diminish the right of a carrier to negotiate with an employer that purchased a health benefits plan over the amount of any proposed increase in the premium rate for the renewal of that plan.
- d. The Commissioner of Banking and Insurance shall promulgate regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to effectuate the provisions of this section.

CHAPTER 2 MERCANTILE ESTABLISHMENTS

34:2-29. Seats to be provided

Every employer of one or more employees in any manufacturing, mechanical or mercantile establishment or in the services and operations incident to any commercial employment shall provide and maintain suitable seats conveniently situated and shall permit the use of such seats by employees at all times except when necessarily engaged in the discharge of duties that cannot properly be performed in a sitting position.

34:2-30. Inspections

The commissioner shall see that the provisions of R.S. 34:2-29 of this title are carried out in all mercantile establishments, and shall, at reasonable intervals, examine and inspect all such mercantile establishments to see that the seats required to be provided by R.S. 34:2-29 are fully maintained and that employees are permitted to use them freely and without hindrance.

34:2-30.1. Penalty; notice to offender

Any individual, firm or corporation owning or managing an establishment of the kind mentioned in section 34:2-29 of this title, who shall fail to comply with the requirements of said section 34:2-29 within ten days after the date on which notice to do so has been served by the commissioner or one of his deputies shall be liable to a penalty of twenty-five dollars for each offense, and a failure to comply within the period of ten days, with such repetition of such notice as may be necessary, shall each constitute a separate offense.

CHAPTER 40A LIE DETECTOR TEST

2C:40A-1. Employer requiring lie detector test

Any person who as an employer shall influence, request or require an employee or prospective employee to take or submit to a lie detector test as a condition of employment or continued employment, commits a disorderly persons offense. The provisions of this section shall not apply if: (1) the employer is authorized to manufacture, distribute or dispense controlled dangerous substances pursuant to the provisions of the "New Jersey Controlled Dangerous Substances Act," P.L.1970, c. 226 (C. 24:21-1 et seq.); (2) the employee or prospective employee is or will be directly involved in the manufacture, distribution, or dispensing of, or has or will have access to, legally distributed controlled dangerous substances; and (3) the test, which shall cover a period of time no greater than 5 years preceding the test, and except as provided in this section, shall be limited to the work of the employee or prospective employee and the individual's improper handling, use or illegal sale of legally distributed controlled dangerous substances. The test may include standard baseline questions necessary and for the sole purpose of establishing a normal test pattern. Any employee or prospective employee who is required to take a lie detector test as a precondition of employment or continued employment shall have the right to be represented by legal counsel. A copy of the report containing the results of a lie detector test shall be in writing and be provided, upon request, to the individual who has taken the test. Information obtained from the test shall not be released to any other employer or person. The employee or prospective employee shall be informed of his right to present to the employer the results of an independently administered second lie detector examination prior to any personnel decision being made in his behalf by the employer.

2C:40A-2. Violation of contract to pay employees

- a. An employer who has agreed with an employee or with a bargaining agent for employees to pay wages, compensation or benefits to or for the benefit of employees commits a disorderly persons offense if the employer:
 1. fails to pay wages when due; or
 2. fails to pay compensation or benefits within 30 days after due.
- b. If a corporate employer violates subsection a., any officer or employee of the corporation who is responsible for the violation commits a disorderly persons offense.

CHAPTER 55 WAGE PAYMENT REGULATIONS

SUBCHAPTER 1. GENERAL PROVISIONS; VIOLATIONS; FEES AND PENALTIES; HEARINGS

12:55-1.1 Purpose and scope

- (a) The purpose of this chapter is to establish rules to effectuate N.J.S.A. 34:11-41 et seq., an act regarding the payment of wages.
- (b) The chapter is applicable to:
 - 1. Wages and hours subject to the Act;
 - 2. Wages paid to an employee for services rendered; and
 - 3. Time and mode of payment.
- (c) This chapter shall not apply to:
 - 1. Volunteers; or
 - 2. Patients.

12:55-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise. "Act" means N.J.S.A. 34:11-4.1 et seq., an act regarding the payment of wages.

"Commissioner" means the Commissioner of Labor or his or her designee.

"Employee" means any person suffered or permitted to work by an employer, except that independent contractors and subcontractors shall not be considered employees.

"Employer" means any individual, partnership, association, joint stock company, trust, corporation, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same, employing any person in this State. For the purposes of the Act and this chapter, the officers of a corporation and any agents having the management of such corporation shall be deemed to be the employers of the employees of the corporation.

"Mass transportation" means railroads operated by steam, electricity or other power, rapid transit lines and ferries, buses or other vehicles which possess a certificate of public convenience and necessity issued by the New Jersey Department of Transportation.

"Wages" means the direct monetary compensation for labor or services rendered by an employee, where the amount is determined on a time, task, piece, or commission basis excluding any form of supplementary incentives and bonuses which are calculated independently of regular wages and paid in addition thereto.

12:55-1.3 Powers of the Commissioner

- (a) The Commissioner shall enforce and administer the provisions of the Act and the Commissioner or his or her authorized representatives are empowered to investigate charges of violations of the Act.
- (b) The Commissioner or his or her authorized representatives are empowered to enter and inspect such places, question such employees and investigate such facts, conditions or matters as they may deem appropriate to determine whether any person has violated any provision of the Act or this chapter or which may aid in the enforcement of the provisions of the Act or this chapter.
- (c) The Commissioner or his or her authorized representatives shall have power to administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses, and the production of papers, books, accounts, records, payrolls, documents, and testimony, and to take depositions and affidavits in any proceeding before the Commissioner.
- (d) If a person fails to comply with any subpoena lawfully issued, or on the refusal of any witness to testify to any matter regarding which he or she may be lawfully interrogated, it shall be the duty of the Superior Court, on application by the Commissioner, to compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.
- (e) The Commissioner is authorized to supervise the payment of amounts due to employees pursuant to Article 1 of chapter 11 of Title 34 of the Revised Statutes, and the employer may be required to make these payments to the Commissioner to be held in a special account in trust for the employees, and paid on order of the Commissioner directly to the employee or employees affected. The employer shall also pay the Commissioner an administrative fee

equal to not less than 10 percent or more than 25 percent of any payment made to the Commissioner pursuant to this section. The amount of the administrative fee is specified in N.J.A.C. 12:55-1.5. The fee shall be applied to enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.

12:55-1.4 Violation; punishment

Any employer who knowingly and willfully violates any provision of P.L. 1965, c.173 (N.J.S.A. 34:11-4.1 et seq.) shall be guilty of a disorderly persons offense and, upon conviction for a violation, shall be punished by a fine of not less than \$100.00 nor more than \$1,000. Each day during which any violation of the Act continues shall constitute a separate and distinct offense.

12:55-1.5 Administrative fee

- (a) The employer shall pay the Commissioner an administrative fee on all payments of gross amounts due employees pursuant to N.J.S.A. 34:11-4.1 et seq.
- (b) A schedule of fees is as follows:
 - 1. First violation...10 percent of the amount due the employee;
 - 2. Second violation...18 percent of the amount due the employee;
 - 3. Third and subsequent violations...25 percent of the amount due the employee.
- (c) All payments shall be made payable to the Commissioner of Labor, Wage Payment Trust Fund by certified check or money order, or in the form suitable to the Commissioner of Labor.

12:55-1.6 Administrative penalty

- (a) As an alternative or in addition to any other sanctions provided for in N.J.S.A. 34:11-4.1 et seq. when the Commissioner finds that an employer has violated the Act, the Commissioner is authorized to assess and collect an administrative penalty in the amounts that follow:
 - 1. First violation...not more than \$250.00;
 - 2. Second and subsequent violations...not less than \$25.00 nor more than \$500.00.
- (b) No administrative penalty shall be levied pursuant to this subchapter unless the Commissioner provides the alleged violator with notification by certified mail of the violation and the amount of the penalty and an opportunity to request a formal hearing. A request for a formal hearing must be received within 15 working days following the receipt of the notice.
 - 1. The notice shall become the Final Order upon the expiration of the 15 working day period following receipt of the notice if a hearing is not requested.
 - 2. If a hearing is requested the Commissioner shall issue a Final Order upon such hearing and a finding that the violation has occurred.
 - 3. All fees and penalties shall be paid within 30 days of the Final Order. Failure to pay such fees and/or penalty shall result in a Judgment being obtained in a court of competent jurisdiction.
 - 4. All payments shall be payable to the Commissioner of Labor, Wage Payment Trust Fund in the form of a certified check or money order, or such other form suitable to the Commissioner of Labor.
- (c) In assessing an administrative penalty pursuant to this chapter, the Commissioner shall consider the following factors, where applicable, in determining what constitutes an appropriate penalty for the particular violations:
 - 1. The seriousness of the violations;
 - 2. The past history of previous violations by the employer;
 - 3. The good faith of the employer;
 - 4. The size of the employer's business; and
 - 5. Any other factors which the Commissioner deems to be appropriate in the determining of the penalty assessed.

12:55-1.7 Interest

- (a) When the Commissioner makes an award of back pay, he or she may also award interest in the following situations:
1. When an employer has unreasonably delayed compliance with an order of the Commissioner to pay wages owed to an employee;
 2. Where an equitable remedy is required in order to recover the loss of the present value of money retained by the employer over an extensive period of time; or
 3. Where the Commissioner finds sufficient cause based on the particular case.
- (b) Where applicable, interest deemed owed to an employee shall be calculated at the annual rate as set forth in New Jersey Court Rules, 4:42-11.

12:55-1.8 Hearings

- (a) When the Commissioner assesses an administrative penalty under N.J.A.C. 12:55-1.6, the employer shall have the right to a hearing under (b) below.
- (b) No administrative penalty shall be levied pursuant to this subchapter unless the Commissioner provides the alleged violator with notification by certified mail of the violation and the amount of the penalty and an opportunity to request a formal hearing. A request for formal hearing must be received within 15 working days following the receipt of the notice. All hearings shall be heard pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.
- (c) The Commissioner shall make the final decision of the Department.
- (d) Appeals of the final decision of the Commissioner shall be made to the Appellate Division of the New Jersey Superior Court.
- (e) Recipients of an administrative penalty assessment may request the initiation of a settlement conference at the time that a hearing request is made.
- (f) If the employer, or a designated representative of the employer, fails to appear at a requested hearing, the Commissioner or his or her designee may, for good cause shown, re-schedule a hearing.
- (g) If the Commissioner or his or her designee does not authorize such a re-scheduled hearing, then the Commissioner shall issue a final agency determination effective upon the date set for the original hearing.
- (h) Payment of the penalty is due when a final agency determination is issued.
- (i) Upon final order the penalty imposed may be recovered with cost in a summary proceeding commenced by the Commissioner pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq.

SUBCHAPTER 2. PAYROLL DEDUCTIONS

12:55-2.1 Payroll deductions; general

- (a) No employer may withhold or divert any portion of any portion of an employee's wages unless:
1. The employer is required or empowered to do so by New Jersey or United States law; or
 2. The amounts withheld or diverted are for:
 - i. Contributions authorized either in writing by employees, or under a collective bargaining agreement, to employee welfare, insurance, hospitalization, medical or surgical or both, pension, retirement, and profit-sharing plans, and to plans establishing individual retirement annuities on a group or individual basis, as defined by section 408(b) of the Federal Internal Revenue Code of 1954 as amended (26 U.S.C. 408(b)), or individual retirement accounts at any State or Federally chartered bank, savings bank, or savings and loan association, as defined by section 408(a) of the Federal Internal Revenue Code of 1954, as amended (26 U.S.C. 408(a)), for the employee, his or her spouse or both.

- ii. Contributions authorized either in writing by employees, or under a collective bargaining agreement, for payment into company-operated thrift plans; or security option or security purchase plans to buy securities of the employing corporation, an affiliated corporation, or other corporations at market price or less, provided such securities are listed on a stock exchange or are marketable over the counter.
- iii. Payments authorized by employees for payment into employee personal savings accounts, such as payments to a credit union, savings fund society, savings and loan or building and loan association; and payments to banks for Christmas, vacation, or other savings funds; provided all such deductions are approved by the employer.
- iv. Payments for company products purchased in accordance with a periodic payment schedule contained in the original purchase agreement; payments for employer loans to employees, in accordance with a periodic payment schedule contained in the original loan agreement; payments for safety equipment; payments for the purchase of United States Government bonds; and payments to correct payroll errors; provided all such deductions are approved by the employer.
- v. Contributions authorized by employees for organized and generally recognized charities; provided the deductions for such contributions are approved by the employer.
- vi. Payments authorized by employees or their collective bargaining agents for the rental of work clothing or uniforms or for the laundering or dry cleaning of work clothing or uniforms; provided to the employee at his or her discretion by an outside vendor or the employer and, provided the deductions for such payments are approved by the employer.
- vii. Labor organization dues and initiation fees, and such other labor organization charges permitted by law.
- viii. Such other contributions, deductions and payment as the Commissioner of Labor may authorize by regulation as proper and in conformity with the intent and purpose of the Act, if such deductions are approved by the employer.

12:55-2.2 Payroll deductions for mass transportation commuter tickets

- (a) Each employer may use a payroll deduction as a means of providing mass transportation commuter tickets only if the payroll deduction has been authorized by the employee in writing or in a collective bargaining agreement.
- (b) Each employer that uses a payroll deduction as set forth in (a) above shall make this method of payment for mass transportation commuter tickets available to all of its employees.
- (c) When an employer provides transportation to a work site, the employer may deduct the actual cost, exclusive of profit to the employer, of such transportation, provided such deduction is in accordance with (a) above.

12:55-2.3 Voluntary wage deduction for repayment of financial obligations to the State of New Jersey

- (a) Each employer may institute a system whereunder a portion of an employee's salary is withheld as an installment payment against any financial obligation by that employee to the State of New Jersey.
- (b) Any employer who institutes such a repayment plan pursuant to (a) above shall withhold on a periodic basis from an employee's salary only such an amount as that employee shall have expressly authorized in writing.
- (c) Any employer who withholds any sum from an employee's salary for repayment of a financial obligation by the employee to the State shall forthwith pay the amount of such withheld salary to the appropriate State officer or agent to whom such obligation is made payable.
- (d) Nothing in this section shall be construed as mandating participation by an employer or employee in such an installment repayment program.

12:55-2.4 Time and mode of payment

- (a) All final payment of wages following the termination or voluntary leaving of employment shall be completed within 10 days from the end of the work period for which such wages are earned, in compliance with N.J.S.A. 34:11-4.2.

- (b) When any employee is suspended as a result of a labor dispute and such labor dispute involves those employees who make up payrolls, the employer may have an additional 10 days in which to pay such wages.
- (c) The employer shall:
 - 1. Pay the employee on the regular scheduled pay date; or
 - 2. Mail such payment of wages to the last known address of the employee.
- (d) Payment of wages shall be in lawful money of the United States or with checks drawn on banking institutions where suitable arrangements are made for the cashing of such checks by employees without difficulty and for the full amount for which they are drawn.
- (e) When a fee is charged for the cashing of a payroll check at the banking institution on which the check is drawn, the employer shall bear the burden of the fee.
- (f) Where suitable arrangements are not made for the cashing of payroll checks as set forth in (d) above, the employer shall bear the burden of any fee charged to the employee for the cashing of such payroll check.

12:55-2.5 Withholding of income tax for foreign jurisdictions

- (a) For purposes of this section, a foreign jurisdiction means a sister state or any municipality or other subdivision of a sister state which imposes a tax on the income or wages of nonresidents employed in New Jersey.
- (b) Each New Jersey employer who employs nonresidents may, for each pay period, deduct and withhold an amount, computed in accordance with (d) below, from the salary or wages of an employee whose salary or wages are subject to the income or wage tax of a foreign jurisdiction, for the purpose of crediting such amount on account of the income or wage tax due or to become due from the employee to the foreign jurisdiction.
- (c) An employer shall not deduct and withhold an employee's salary or wages under (b) above unless it has obtained the expressed written authorization of the employee.
- (d) The amount of the employee's salary or wages deducted and withheld shall be computed in such a manner as to result in withholding from the employee's salary or wages, during each calendar year, an amount substantially equivalent to the tax reasonably estimated to be or become due from such employee to the foreign jurisdiction as taxes upon his or her salary or wages received from the employer during the calendar year.
- (e) The employer shall hold the amounts deducted and withheld in a trust fund for payment to the foreign jurisdiction.
- (f) The employer shall furnish to the foreign jurisdiction a statement of the name, place of residence, amount of salary or wages earned by, and amount of salary or wages so deducted or withheld from the employee.
- (g) Nothing in this section shall eliminate, reduce or replace an employer's wage reporting and recordkeeping requirements under N.J.S.A. 34:11-1 et seq. and N.J.A.C. 12:56-4.1, or an employer's gross income tax withholding requirements under N.J.S.A. 54A:7-1 et seq. and N.J.A.C. 18:35-1.10 for an employee who authorizes the employer to withhold the income or wage tax of a foreign jurisdiction.

CHAPTER 61 WAGE COLLECTION REGULATIONS

SUBCHAPTER 1. GENERAL PROVISIONS

12:61-1.1 Purpose; scope

- (a) The purpose of this subchapter is to establish rules to effectuate N.J.S.A. 34:11-57 et seq., the New Jersey State Wage Collection Law, to empower the Commissioner of Labor means of collecting wages due.
- (b) The chapter is applicable to:
 - 1. Wages and hours subject to the New Jersey State Wage Collection Law;
 - 2. Wages paid to an employee for services rendered; and
 - 3. Time and mode of payment.
- (c) This chapter shall not apply to:

1. Volunteers; or
2. Patients.

12:61-1.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. "Commissioner" means the Commissioner of Labor or any person or persons in the Department designated in writing by him or her for the purposes of this article.

"Employee" means any natural person who works for another for hire.

"Employer" means any person, partnership, firm or corporation employing another for hire.

"Service" means proper legal service of a summons, subpoena, or any other legal document referred to in this subchapter. Service shall be in accordance with the New Jersey Civil Court Rules.

"Wages" means any monies due an employee from the employer, pursuant to laws administered by the Commissioner, whether payable by the hour, day, week, semi-monthly, monthly or yearly and shall include commissions, bonuses, piecework compensation and any other benefits arising out of an employment contract.

12:61-1.3 Powers of the Commissioner

- (a) The Commissioner of Labor or his or her representative is authorized and empowered to investigate any claim for wages due an employee. In conducting such investigation, the Commissioner or his or her representative may do the following:
 1. Summon the defendant;
 2. Subpoena witnesses;
 3. Administer oaths; and
 4. Take testimony.
- (b) The Commissioner of Labor or his or her duly authorized representative shall upon such proceeding make a decision or award when the sum in controversy, exclusive of costs, does not exceed \$10,000.
- (c) Such decision or award as mentioned in (b) above shall be a judgment when a certified copy thereof is filed with the Superior Court.
- (d) The Commissioner of Labor is authorized to supervise payments of amounts due to employees.
- (e) The Commissioner or his or her representative shall make the final decision of the Department.
- (f) Appeals of the final decision of the Department shall be made to the Superior Court of New Jersey, Law Division pursuant to N.J.S.A. 34:11-63 and Rule 4:74-8 of the New Jersey Rules of Court.

12:61-1.4 Administrative fees

- (a) The employer shall pay the Commissioner an administrative fee on all payment of gross amounts due employees pursuant to N.J.S.A. 34:11-58. Although the administrative fee is not collected by the Commissioner until the actual payment of wages due, the duty to pay the fee attaches immediately upon the filing of a claim for wages.
- (b) A schedule of fees are as follows:
 1. First violation—10 percent of the amount due an employee;
 2. Second violation—18 percent of the amount due an employee;
 3. Third and subsequent violations—25 percent of the amount due an employee.
- (c) All payments shall be made payable to the Commissioner of Labor, Wage Collection Trust Fund by certified check or money order in a form suitable to the Commissioner of Labor.
- (d) All fees shall become part of the judgment as mentioned in 12:61-1.3(d).

12:61-1.5 Interest

- (a) When the Commissioner makes an award of back pay, he or she may also award interest in the following situations:
1. When an employer has unreasonably delayed compliance with an order of the Commissioner to pay wages owed to an employee;
 2. Where an equitable remedy is required in order to recover the loss of the present value of money retained by the employer over an extensive period of time; or
 3. Where the Commissioner finds sufficient cause based on the particular case.
- (b) Where applicable, interest deemed owed to an employee shall be calculated at the annual rate as set forth in New Jersey Court Rules, 4:42-11.

12:61-1.6 Wage settlement agreements

- (a) The terms of any settlement agreement entered into between an employer and employee(s) subsequent to the initiation of the wage collection process shall be conveyed to the Commissioner or his or her designee for review.
- (b) The Commissioner or his or her designee shall thereupon determine if the settlement agreement comports with the applicable wage statutes and rules of the State of New Jersey.
- (c) Any settlement agreement entered into in violation of the wage laws of the State shall be deemed by the Commissioner or his or her designee to be null, void and unenforceable.